

**MEMORANDUM  
TO THE HONORABLE JACK B. WEINSTEIN  
SENIOR UNITED STATES DISTRICT JUDGE**

**RE: Marcos Espinal-Pena**

**DOCKET NO.: CR-02-1424 (JBW)**

**REQUEST TO VACATE VIOLATION  
CHARGE**

Reference is made to the above-mentioned offender who was sentenced by Your Honor on April 29, 2003, to eighteen (18) months custody and a three (3) year term of supervised release with the special condition that the offender is not to be kept in the United States for supervised release if he is voluntarily or involuntarily deported. The Court informs the offender that if he is deported and he returns to the United States illegally, it will be considered a separate crime for which he could be prosecuted. A \$100.00 special assessment was also imposed. This sentence followed a guilty plea to Illegal Re-Entry, a class C felony. On March 9, 2005, the offender was released from the custodial portion of his federal sentence from the Bureau of Prisons and taken into immigration custody. Verification from an immigration inquiry reflects that the offender was deported to the Dominican Republic on March 23, 2005. Supervision commenced effective March 9, 2005, on inactive status due the offender's deportation, and was scheduled to terminate on March 8, 2008.

As your Honor may recall, we contacted the Court on February 15, 2006, to request a transfer of jurisdiction in order for Judge David Briones, in the Western District of Texas to consolidate both the sentencing on the charge of Illegally Entering the United States and the violation of supervised release charge which was predicated by the new offense. Your Honor authorized the transfer however, the transfer was declined by the Western District of Texas who informed that according to the El Paso Division Policy all jurisdiction cases must be completed in 21 days prior to the defendant's sentencing date, otherwise they will be declined. In this instance there was an unforeseeable delay from our Clerk's Office in forwarding the Court file, therefore El Paso's Clerk's Officer never processed the transfer and Judge Briones ordered jurisdiction transfer returned to the Eastern District of New York for revocation purposes.

On March 21, 2006, the offender was sentenced in the Western District of Texas, on the new charge of Illegal Re-Entry into the United States, to 30 months custody followed by a 3 year term of supervised release term of non-reporting supervised release, and ordered to pay a \$100 special assessment fee. Additionally, his prior term from the District of Puerto Rico was revoked and he was sentenced to a 12 month custody term to run consecutive with the new sentence.

In order to bring closure to the pending charges on the violation of supervised release under Docket # CR-02-1424(JBW), we recommend that the violation charge of new criminal conduct, be vacated based on the fact that the offender is currently serving a total of 42 months custody (30 months on the new instant offense under Docket # EP-05-CR-2461DB(1) and 12 months consecutive on the violation conduct- both which stem from the same offense conduct, to wit; Illegal Re-entry into the United States).



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We have enclosed the Western District of Texas presentence report for the Court's review.  
Please indicate Your Honor's decision regarding the violation of supervised release below.

RESPECTFULLY SUBMITTED:  
TONY GAROPPOLO  
CHIEF U.S. PROBATION OFFICER

PREPARED BY:

Jill D. Williams  
Jill D. Williams  
Supervising U.S. Probation Officer

April 6, 2006

VACATE VIOLATION OF SUPERVISED RELEASE

Judi M. Hunter  
U.S. District Judge

4/11/06  
Date

PROCEED WITH VIOLATION OF SUPERVISED RELEASE

\_\_\_\_\_  
U.S. District Judge

\_\_\_\_\_  
Date